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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058543
Party	Defendant Razer (Asia-Pacific) Pte Ltd.
Correspondence Address	KEITH A BARRITT FISH & RICHARDSON PC PO BOX 1022 MINNEAPOLIS, MN 55440 1022 UNITED STATES barritt@fr.com, tmdoctc@fr.com, erickson@fr.com
Submission	Opposition/Response to Motion
Filer's Name	Keith Barritt
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Signature	/Keith Barritt/
Date	07/21/2016
Attachments	Razer brief in opposition to motion for recon.pdf(873830 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
U.S. TRADEMARK TRIAL AND APPEAL BOARD**

EDGE GAMES, INC.

Petitioner,

v.

RAZER (ASIA-PACIFIC) PTE LTD,

Registrant.

Cancellation No.: 92058543

Mark: EDGE

Registration No. 4,394,393

Registered: September 3, 2013

**REGISTRANT RAZER (ASIA-PACIFIC) PTE LTD'S  
BRIEF IN OPPOSITION TO PETITIONER EDGE GAMES, INC.'S  
MOTION FOR RECONSIDERATION OF DECISION ON MOTION AND  
MOTION FOR RELIEF FROM FINAL JUDGMENT**

Edge Games has filed a request for reconsideration of the Board's order of June 2, 2016 dismissing its cancellation action due to both (1) failure to cooperate in discovery and (2) failure to comply with an explicit Board warning against the filing of unauthorized motions and making unauthorized *ex parte* communications with the Board. In the same motion Edge Games has also requested relief from the final judgment granted in the Board's order of June 2, 2016. Both of Edge Games' requests should be summarily dismissed, as not only has Edge Games failed to show it is entitled to relief, but perhaps more importantly, as is consistent with Edge Games' pattern of practice in both this and numerous other legal proceedings,<sup>1</sup> its latest filing contains numerous false statements and false documents, further solidifying the basis of the Board's prior decision.

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<sup>1</sup> See, for example, 31 TTABVUE at 9-16, 38 TTABVUE at 5-8, and 47 TTABVUE at 5.

**1. Edge Games Has Failed to Satisfy the Requirements for Reconsideration or Relief from Final Judgment**

Edge Games claims that the Board's prior decision should be overturned due to reasons that were mostly "unknown to the Board, overlooked by the Board or were misunderstood by the Board." 54 TTABVUE at 8. The details of Edge Games' motion is somewhat disjointed and the arguments, such as they are, are not easy to follow.<sup>2</sup> Most of the points raised by Edge Games were fully addressed in the briefing in response to the Board's January 11, 2016 Order to Show Cause, and as noted in Section 543 of the TBMP a motion for reconsideration should not "be devoted simply to a reargument of the points presented in the requesting party's brief." As for the new points, they are based on untruths and fabricated evidence, as discussed further below.

Edge Games apparently attempts to argue that the parties' discovery dispute was focused on a single license relationship with Velocity Micro, which was allegedly resolved after Edge Games finally produced a copy of the license.<sup>3</sup> However, as discussed in detail in Razer's prior briefing (*see, e.g.*, 47 TTABVUE at 5 and 44 TTABVUE at 4), Edge Games failed to produce documents and information regarding (1) the relationship between

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<sup>2</sup> Pursuant to 37 CFR 2.127(a), the page limit for a brief in support of a motion such as Edge Games' is 25 pages. Edge Games' brief reaches that limit – but also includes a 35 page "declaration" from Edge Games' CEO, Tim Langdell, who is appearing *pro se* on behalf of Edge Games. The declaration does address a few alleged facts, but mainly consists of arguments in support of Edge Games' motion. This amounts to simply a ruse to evade the 25 page limit and further supports denial of Edge Games' request for reconsideration or relief from judgment.

<sup>3</sup> The Board was aware that Edge Games had produced the Velocity Micro license when it issued its June 2, 2016 Order. See 49 TTABVUE at 9-10. The Board also had copies of Edge Games' discovery responses of November 17, 2015 and its amended discovery responses of December 28, 2015. See 39 TTABVUE and 41 TTABVUE.

Edge Games and many of its other alleged licensees and assignors, and (2) the quality control provisions in its alleged licenses and how they are enforced, and (3) how the goodwill was assigned to Edge Games for those marks assigned to it. Thus, Edge Games' argument now that its improper objection of privilege and confidentiality was limited to just one licensee is irrelevant, especially considering that the Board has affirmatively agreed in its June 2, 2016 Order that Edge Games' discovery responses were "woefully inadequate" (50 TTABVUE at 2).

Edge Games also again tries to paint the picture that it fully advised Razer that its document production would be made on or about November 17, 2015. For example, Edge Games states that Razer was "fully apprised of when the documents would arrive" (54 TTABVUE at 6), that Razer was "fully aware that the vast majority of documents requested were in the possession of [Edge Games'] licensee Velocity Micro" and all other documents had been "misplaced" by Edge Games (54 TTABVUE at 11), and that Razer "knew well that the bundle of documents was expected to be served in [sic] or about November 17, 2015" (54 TTABVUE at 12).

The truth, however, as fully discussed in prior briefing, is that there was no way for Razer's counsel to "know" when, if ever, it would be receiving any document production from Edge Games (see 38 TTABVUE at 6-8). Edge Games has simply not raised anything new in these arguments that demonstrates Board error sufficient to overturn its June 2, 2016 Order or to grant a motion for relief from judgment.

Likewise, Edge Games again falsely claims that its document production was made on November 17, 2015 *prior* to the filing of Razer's motion for sanctions or to compel. For example, Edge Games states that "by the time [Razer] filed its Motion, at all times [Edge

Games] had produced all documents . . .” (54 TTABVUE at 6), that “by the time [Razer] served its Motion for Sanctions, [Edge Games] had served on [Razer] every document. . .” (54 TTABVUE at 6), and “[m]ost pertinently, at the time [Razer’s] Motion was filed [on November 17, 2015, Razer] had already been served with all but one document in [Edge Games’] possession” (54 TTABVUE at 13).

The truth, however, as fully discussed in prior briefing and as Edge Games well knows, is that Razer’s motion was filed before it received any documents (see 38 TTABVUE at 7). Again, Edge Games has simply not raised anything new in these arguments that demonstrates Board error sufficient to overturn its June 2, 2016 Order or to grant a motion for relief from judgment.

In short, Edge Games has utterly failed to show that the Board committed error in its June 2, 2016 Order dismissing the cancellation action or that Edge Games is otherwise entitled to relief from judgment.

## **2. Edge Games Has Again Lied to the Board And Fabricated New “Evidence”**

Beyond the now-familiar misstatements of truth discussed above, in its July 3, 2016 motion for reconsideration Edge Games continues its familiar pattern of lying and fabricating new “evidence” when the facts do not suit it. Specifically:

- 1) Edge Games claims to have “bcc’d” Razer’s counsel on its January 8, 2016 improper *ex parte* email to the Board’s interlocutory attorney. Razer’s counsel never received the alleged “bcc” email of January 8, 2016, neither at his personal email address nor via [tmdoctc@fr.com](mailto:tmdoctc@fr.com), the secondary email address for

communications from the Board in this proceeding.<sup>4</sup> Edge Games has produced no documentary evidence that such an email was ever sent. Even if such a document existed, it would not be appropriate to enter into evidence now as either part of the motion for reconsideration (see TBMP 543 noting that a request for reconsideration “may not be used to introduce additional evidence”), nor as part of the motion for relief from final judgment, as it could have been discovered earlier with reasonable diligence (see FRCP 60(b)(2)).

Moreover, the notion that Edge Games inadvertently used the “bcc” rather than “cc” field is simply not believable. Indeed, just a few days after it sent its email to the Board interlocutory attorney, on January 11, 2016 Edge Games apologized for not copying Razer’s counsel on its January 8 email, further confirming that no such “bcc” email was ever sent (see Exhibit A of January 12, 2016 Board order denying permission to file motion, 43 TTABVUE at 3). Clearly, it is only months after the fact and after the Board has dismissed its cancellation action that Edge Games has concocted this excuse in a fraudulent effort to bring alleged “new evidence” to the Board’s attention, when such evidence is non-existent.

Edge Games tries to have it both ways, namely that it both was reasonably confused (due to the Board’s allegedly inconsistent and confusing instructions of course)<sup>5</sup> as to whether *ex parte* communications with the interlocutory attorney were

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<sup>4</sup> Paragraph 2 of Barritt Declaration and Paragraph 4 of Weide Declaration, Exhibits 1 and 2 hereto respectively.

<sup>5</sup> Not surprisingly, Edge Games continues its familiar practice of blaming the Board for its behavior, complaining for example that the Board (1) included in “fine print” in its

permitted – and oh by the way, it also allegedly “bcc’d” Razer’s counsel on its January 8, 2016 email to the interlocutory attorney even though it claims it reasonably believed no such copy to Razer’s counsel was required. While Edge Games may have been confused, it cannot blame the Board nor be believed that it “bcc’d” Razer’s counsel.<sup>6</sup>

- 2) Edge Games claims (without providing any evidence) that the parties “had agreed . . . that document production would be via mail” (54 TTABVUE at 11). This is simply a false statement, as clearly demonstrated by Edge Games’ own admission in its email to Razer’s counsel of January 8, 2016 that “we never made such an agreement.”<sup>7</sup>

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January 30, 2015 Order the requirement that it contact both the Board and opposing counsel via email to schedule a conference to discuss any proposed motions (54 TTABVUE at 17), (2) gave “conflicting and confusing instruction” on seeking permission to file unconsented motions (54 TTABVUE at 18), and (3) “reaffirmed [Edge Games’] false recollection of the [January 30, 2015] order by affirming the false recollection as if accurate” (54 TTABVUE at 18).

<sup>6</sup> Edge Games also claims it was “tricked” into its choice of counsel for responding to the Board’s January 11, 2016 Order to Show Cause, and that the attorney committed “fraud,” presumably on Edge Games (54 TTABVUE at 33-35). Even if true, these are not new facts and do not show that the Board committed error in issuing its June 2, 2016 Order or that Edge Games is entitled to relief from judgment.

<sup>7</sup> See Paragraph 3 and Attachment A to Barritt Declaration, Exhibit 1 hereto.

- 3) Edge Games claims to have provided a privilege log dated March 3, 2015 (54 TTABVUE at 37 and 76). Not only is the introduction of such alleged new evidence improper at this stage, the truth is that no such privilege log was ever received by Razer's counsel.<sup>8</sup> The only reasonable conclusion is that this document is a fabrication, consistent with Edge Games' well-established pattern of behavior in this and various other legal proceedings as documented in prior filings (see footnote 1 hereto).
- 4) Edge Games claims to have agreed to dispense with the exchange of privilege logs in an alleged letter sent to Razer's counsel's office in Washington, D.C. dated April 7, 2014 (54 TTABVUE at 36 and 74). As with Edge Games' alleged privilege log, not only is the introduction of such alleged new evidence improper at this stage, the truth is that no such letter was ever received by Razer's counsel,<sup>9</sup> and the only reasonable conclusion is that this document, too, is a fabrication.
- 5) Edge Games admits that it made unauthorized *ex parte* contact with the Board on September 30, 2015 and claims that the Board gave it verbal authorization on October 5, 2015 to file an unconsented motion (54 TTABVUE at 19). In support of this contention, Edge Games has provided alleged phone records that purportedly

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<sup>8</sup> See Paragraph 4 of Barritt Declaration and Paragraph 5 of Weide Declaration, Exhibits 1 and 2 hereto, respectively.

<sup>9</sup> See Paragraph 5 of Barritt Declaration, Exhibit 1 hereto.



show a seven minute call from the Board on October 5, 2015 (54 TTABVUE at 84). Assuming for a moment this is not a doctored document, it shows nothing about the content of any conversation that may have occurred. Indeed, as Edge Games has noted, at the time it was involved in five other proceedings before the Board (see TTABVUE at 50), and thus there is no way of knowing which case this alleged call involved.

Moreover, it is simply impossible to believe that the Board would grant authorization to Edge Games to file an unconsented motion following an unauthorized *ex parte* communication in contravention of the Board's own January 30, 2015 Order. Indeed, considering Edge Games' litigious nature, it is likewise impossible to believe that Edge Games would not act immediately on any such verbal authorization and would instead wait two months until December 8, 2015 to file such a motion, or to "forget" that it had been granted such authorization when briefing its initial response to the Board's January 11, 2016 Order to Show Cause. Thus, not only is the introduction of such alleged new evidence improper at this stage, it is simply impossible to believe that any such authorization was ever granted, which the Board itself can readily confirm.

6) Edge Games' July 3, 2016 filing contains two certificates of service, one following Edge Games' cover letter that is dated July 2, 2016 and the other at the end of the motion which is dated July 1, 2016 (54 TTABVUE at 3 and 32). Neither of these certificates refers to service via U.S. certified mail, in direct contravention of the Board's order of January 30, 2015 (16 TTABVUE at 4).

Furthermore, no service copy has been received by Razer's counsel by any means.<sup>10</sup> Likewise, Razer has never received formal service of Edge Games' "Substitution of Counsel" filed with the Board on July 2, 2016.<sup>11</sup> The failure to serve a copy of its motion for reconsideration and Substitution of Counsel is consistent with Edge Games' past behavior, especially at this stage of the proceedings when Edge Games may be looking for every possible way of putting Razer at a disadvantage by not serving copies of papers filed with the Board.

- 7) Edge Games claims that there was valid proof of service of two documents, despite not having included a certificate of service page on the documents filed with the Board. Contrary to Edge Games' claims, Razer never received formal service of either document.<sup>12</sup>

## **V. Conclusion**

For the reasons stated above, Razer respectfully requests that the Board dismiss Edge Games motion and allow the June 2, 2016 Order dismissing this case with prejudice to stand.

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<sup>10</sup> See Paragraph 6 of Weide Declaration, Exhibit 2 hereto.

<sup>11</sup> See Paragraph 7 of Weide Declaration, Exhibit 2 hereto.

<sup>12</sup> See Paragraphs 8-9 of Weide Declaration, Exhibit 2 hereto.

Respectfully submitted,

Razer (Asia-Pacific) Pte Ltd

By: 

Keith A. Barritt

Fish & Richardson P.C.

PO Box 1022, Minneapolis, MN 55440-1022

phone: (202) 783-5070

fax: (202) 783-2331

July 21, 2016

Date

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

EDGE GAMES, INC.

Petitioner,

v.

RAZER (ASIA-PACIFIC) PTE LTD,

Registrant.

Cancellation No.: 92058543

Mark: EDGE

Registration No. 4,394,393

Registered: September 3, 2013

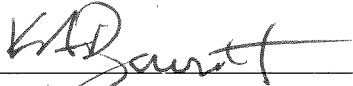
CERTIFICATE OF SERVICE

In accordance with 37 CFR 2.111(b), the undersigned hereby certifies that on July 21, 2016, a true copy of the foregoing Registrant Razer (Asia-Pacific) Pte Ltd's Brief In Opposition To Edge Games' Motion for Reconsideration of Decision on Motion and Motion for Relief from Final Judgment was sent via U.S. certified mail, postage prepaid, addressed to the following correspondent of record for Edge Games, Inc.:

Michael L. Lovitz  
Lovitz IP Law PC  
8355 W. Sunset Blvd., Suite 314  
West Hollywood, CA 90069

and

Tim Langdell  
Edge Games Inc.  
530 South Lake Avenue, 171  
Pasadena, CA 91101

  
Signature

41201174.doc

# EXHIBIT 1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

EDGE GAMES, INC.

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RAZER (ASIA-PACIFIC) PTE LTD,  
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DECLARATION OF KEITH BARRITT

I, Keith Barritt, declare as follows:

1. I am a principal of Fish & Richardson P.C., counsel of record in this action for Registrant Razer (Asia-Pacific) Pte Ltd ("Razer") and I am over 18 years of age.
2. I never received a copy of the email from Tim Langdell of Edge Games to Ms. Christen English dated January 8, 2016 and attached as Exhibit A to the Board's January 12, 2006 order until I received the order itself. No "bcc" or "cc" copy was ever received by me directly from Tim Langdell or Edge Games or any other source.
3. Attached hereto as Attachment A is a true and correct copy of an email from Tim Langdell to me dated January 8, 2016 stating in the first paragraph that "we never made such an agreement" to copy and mail documents for valid production in response to discovery requests.
4. I never received Edge Games' alleged Privilege Log dated March 3, 2015 included as Exhibit TL3 to Edge Games' July 3, 2016 motion for reconsideration.
5. I never received Edge Games' alleged letter dated April 7, 2014 included as Exhibit TL2 to Edge Games' July 3, 2016 motion for reconsideration.

I declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Keith Barritt  
Keith Barritt

July 19, 2016  
Date

# ATTACHMENT A

**From:** Tim <tim@edgegames.com>  
**Sent:** Friday, January 08, 2016 12:56 PM  
**To:** Keith Barritt  
**Subject:** Re: Location of Document Production in EDGE Cancellation Action No. 92058543 (F&R File 39771-0019PP1)

Re: Razor have so far produced no documents per code

Mr Barritt

Thank you for your email which stands as an admission that you never asked our agreement to copy and mail documents for valid production and we never made such an agreement. Thus Razer has never yet validly produced any documents. You are thus in gross default and we shall file a motion to compel forthwith. However, we will agree your proposal - retroactive and going forward - IF you immediately withdraw all your motions immediately.

To be completely clear, we have never agreed that you may produce documents to us by some method other than that stated in the TBMP - that is, we have never agreed that you may meet the requirements of document production by photocopying pages and mailing them to us. Rather, until and unless the parties agree otherwise, or until and unless the Board order otherwise, then production per TBMP is to be done at an agreed upon location where documents are made available to view and copy at the viewers expense.

We are thus categorically *rejecting* your styling the situation as one where we would be "continuing our practice" of photocopying and mailing documents as if that had previously been established as an agreed practice up to now. Whereas we have never agreed to this practice (and you have never proposed it as something we permit you to do), you on the other hand specifically asked us to send you photocopies and complained loudly that we had not done so. Thus you agreed that we may produce by copying and mailing, but we still insist (as is our right) that since discovery commenced for Razer to comply with the rules in order for it to validly produce a document, it must do so at a location we agree on where we can view and copy.

To be clear, any photocopies mailed to us to-date do not meet the requirement for valid production since there has been no proposal (until today) that this be an agreed process for your production, and we have certainly never agreed such for your production.

Accordingly, Razer has yet to validly produce even a single page of documents. We shall thus file a motion to compel Razer to produce the documents at a location agreed by us at which we can view and copy.

Until then you are grossly passed due by many months in producing anything to us. We shall thus file a motion to compel forthwith, and your email below shall stand as a basis for judgment in or favor since you affirm we never agreed you could produce using mailed photocopies.

However, if you withdraw your motions immediately then we will agree your proposal, and will then (and only then) agree it is retroactive as well as going forward. In this way, and only in this way, you may covert anything you may have mailed into valid production (which it currently is not).

Please let me have your response before 4pm PST today when we shall otherwise seek permission to file a motion to compel to be heard concurrent with your motions.



Kind regards  
Dr Tim Langdell  
CEO Edge Games Inc  
Petitioner in pro se

Sent from my iPhone 6 with apologies for any errors due to Apple's auto-correct or my mis-typing.

On Jan 8, 2016, at 9:06 AM, Keith Barritt <[barritt@fr.com](mailto:barritt@fr.com)> wrote:



Dear Mr. Langdell:

To ensure there is no misunderstanding going forward, I propose we now memorialize in writing the practice we have each been following regarding document production, namely, that each party will produce documents by delivering them to the address of record for the other party, which is common practice in Board proceedings as noted in Section 406.04(b) of the Trademark Trial and Appeal Board Manual of Procedure. I also propose we continue our practice of copying and sending them at the sending party's expense. While this agreement is not retroactive, it does reflect our past practice and will govern our practice in the future.

As you know, Razer is located in Singapore, and thus I presume you will see the advantage of memorializing our agreement.

I look forward to your reply.

Sincerely,

**Keith Barritt** :: Principal :: Fish & Richardson P.C.  
1425 K Street, N.W., Suite 1100 Washington DC 20005  
+1-202-626-6433 direct :: [barritt@fr.com](mailto:barritt@fr.com)  
[fr.com](http://fr.com) :: [FishTMCopyrightblog.com](http://FishTMCopyrightblog.com) :: [Bio](#)

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\*\*\*\*\*  
This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized use or disclosure is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.  
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# EXHIBIT 2

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

EDGE GAMES, INC.

Petitioner,

v.

RAZER (ASIA-PACIFIC) PTE LTD,  
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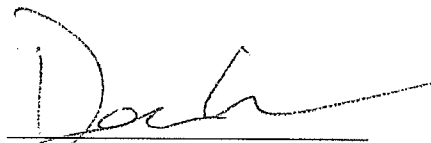
DECLARATION OF DEVON WEIDE

I, Devon Weide, declare as follows:

1. I am Supervisor of APS Indexing & Scanning and a Senior Docketing Specialist at Fish & Richardson P.C., and I am over 18 years of age.
2. Part of my duties at Fish & Richardson P.C. is to ensure that all incoming mail is appropriately routed for proper document management.
3. Mail that is sent to our P.O. Box 1022, Minneapolis, MN 55440 address and the incoming email inbox of tmdoctc@fr.com is routinely processed the same day it is received. All incoming mail is opened, reviewed, indexed, and scanned into our electronic document management system, and the originals then stored or forwarded to the addressee.
4. After a thorough search of all paper mail and electronic files, I confirm that Fish & Richardson P.C. did not receive on January 8, 2016 a copy of Edge Games' email dated January 8, 2016 sent to Ms. Christen English.
5. After a thorough search of all paper mail and electronic files, I confirm that Fish & Richardson P.C. did not receive a copy of Edge Games' Privilege Log dated March 3, 2015.
6. After a thorough search of all paper mail and electronic files, I confirm that Fish & Richardson P.C. did not receive a service copy of Edge Games' "Motion for Reconsideration of Decision on Motion and Motion for Relief from Final Judgment" dated July 2, 2016, nor the corrected version dated July 3, 2016, filed with the Board in the above-captioned proceeding.

7. After a thorough search of all paper mail and electronic files, I confirm that Fish & Richardson P.C. did not receive a service copy of Edge Games' "Substitution of Counsel" filed with the Board on July 2, 2016.
8. After a thorough search of all paper mail and electronic files, I confirm that Fish & Richardson P.C. did not receive a service copy of Edge Games letter to the Board dated September 25, 2014 filed with Board in the above-captioned proceeding.
9. After a thorough search of all paper mail and electronic files, I confirm that Fish & Richardson P.C. did not receive a service copy of Edge Games' "Proof Petitioner Served Revised Discovery Responses On Registrant In A Timely Manner Per The Requirements Of The Board's 9/25/15 Decision" dated October 12, 2015 filed with Board in the above-captioned proceeding.

I declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing statements are true and correct to the best of my knowledge, information and belief.

  
Devón Weide

7/19/2016  
Date